

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

ARTICLE 1. GENERAL PROVISIONS

SECTION

- R2-20-103. Communications: Time and Method
R2-20-104. Certification as a Participating Candidate
R2-20-107 ~~Repealed~~ Candidate Debates

ARTICLE 2. COMPLIANCE AND ENFORCEMENT PROCEDURES

SECTION

- R2-20-206. ~~Administrative Counsel's~~ Executive Director's Recommendation on Complaint-Generated Matters
R2-20-208. Complaint Processing; Notification
R2-20-214. The Probable Cause to Believe Recommendation; Briefing Procedures
R2-20-217. Enforcement Proceedings
R2-20-231. ~~Request for Reconsideration~~ Repealed

ARTICLE 7. USE OF FUNDS AND REPAYMENT

SECTION

- R2-20-702. Use of Campaign Funds
R2-20-702.01 Use of Assets
R2-20-703. Documentation for Direct Campaign Expenditures

ARTICLE 1. GENERAL PROVISIONS

R2-20-103. Communications: Time and Method

- A. General rule: in computing any period of time prescribed or allowed by the Act or these rules, unless otherwise specified, days are calculated by calendar days, and the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. The term "legal holiday" includes New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday for employees of the state.
- B. Special rule for periods less than seven days: when the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.
- C. Special rule for service by regular mail: whenever the Commission or any person has the right or is required to do some act within a prescribed period after the service of any paper by or upon the Commission by regular mail, three calendar days shall be added to the prescribed period.
- D. Special rule for service by certified mail: whenever the Commission or any person is required to do some act within a prescribed period after the service of paper by or upon the Commission, the time period shall begin on the date the recipient signs for the certified mail. If the recipient does not date the certified mail receipt, the postmark on the certified mail receipt will be used as the date of receipt.
- E. The Commission shall use the address of the candidate that is provided on the application for certification filed pursuant to A.R.S. § 16-947. A candidate may designate in writing for the Commission to send written correspondence to a person other than the candidate.
- F. If possible, the Commission shall furnish a copy of all communications electronically.
- G. Delivery of subpoenas, orders and notifications to a natural person may be made by handing a copy to the person, or leaving a copy at his or her office with the person in charge thereof, by leaving a copy at his or her dwelling place or usual place of abode with a person of suitable age and discretion residing therein, by mailing a copy by registered or certified mail to his or her last known address, or by any other method whereby actual notice is given.

- H. When the person to be served is not an individual, delivery of subpoenas, orders and notifications may be made by mailing a copy by registered or certified mail to the person at its place of business or by handing a copy to a registered agent for service, or to any officer, director, or agent in charge of any office of such person, or by mailing a copy by registered or certified mail to such representative at his or her last known address, or by any other method whereby actual notice is given.

R2-20-104. Certification as a Participating Candidate

- A. A nonparticipating candidate who accepts contributions up to the limits authorized by A.R.S. § 16-905, but later chooses to run as a participating candidate, shall:

1. Make the change to participating candidate status during the exploratory and qualifying periods only;
2. Return the amount of each contribution in excess of the ~~\$100~~ individual contribution limit for participating candidates;
3. Return all Political Action Committee (PAC) monies received;
4. Not have spent contributions exceeding ~~\$100~~ the early contribution limit, or any part of ~~contributions~~ a contribution exceeding ~~\$100~~ the early contribution limit;
5. Comply with all provisions of A.R.S. § 16-941.

- B. Money from prior election. If a nonparticipating candidate has a cash balance remaining in the campaign account from the prior election cycle, the candidate may seek certification as a participating candidate in the current election after:

1. Transferring money from the prior campaign account to the candidate's current election campaign account. The amount transferred shall not exceed the permitted personal monies, early contributions, and debt-retirement contributions, as defined in A.R.S. § 16-945(C);
2. Spending the money lawfully prior to April 30 of an election year in a way that does not constitute a direct campaign purpose and does not meet the definition of "expenditure" under A.R.S. § 16-901(8); and the event or item purchased is completed or otherwise used and depleted prior to April 30 of an election year;

3. Remitting the money to the Fund;
4. Disposing of the money in accordance with A.R.S. § 16-915.01; or
5. Holding the money in the prior election campaign account, not to be used during the current election, except as provided pursuant to this Section.

C. Application for certification as a participating candidate. Pursuant to A.R.S. § 16-947, a candidate seeking certification shall file with the Secretary of State a Commission-approved application and a campaign finance report reflecting all campaign activity to date, in accordance with A.R.S. § 16-915.

In the application, a candidate shall certify under oath that the candidate:

1. Agrees to use all Clean Elections funding for direct campaign purposes only;
2. Has filed ~~with the Commission~~ a campaign finance report, showing all campaign activity to date in the current election cycle;
3. Will comply with all requirements of the Act and Commission rules;
4. Is subject to all enforcement actions by the Commission as authorized by the Act and Commission rules;
5. Has the burden of proving that expenditures made by or on behalf of the candidate are for direct campaign purposes;
6. Will keep and furnish to the Commission all documentation relating to expenditures, receipts, funding, books, records (including bank records for all accounts), and supporting documentation and other information that the Commission may request;
7. Will permit an audit or examination by the Commission of all receipts and expenditures including those made by the candidate. The candidate shall also provide any material required in connection with an audit, investigation, or examination conducted by the Commission. The candidate shall facilitate the audit by making available in one central location, such as the Commission's office space, records and such personnel as are necessary to conduct the audit or examination, and shall pay any amounts required to be repaid;
8. Will submit the name and mailing address of the person who is entitled to receive equalizing fund payments on behalf of the candidate and the name and address of the campaign depository designated by the candidate. Changes in the information required by this subsection shall not be

effective until submitted to the Commission in a letter signed or submitted electronically, by the candidate or the committee treasurer;

9. Will pay any civil penalties included in a conciliation agreement or otherwise imposed against the candidate;
10. Will timely file all campaign finance reports with the secretary of state in an electronic format.
11. Will file an amended application for certification reporting any change in the information prescribed in the application for certification within five days after the change.

D. If certified as a participating candidate, the candidate shall:

1. Only accept early contributions from individuals during the exploratory and qualifying periods ~~that do not exceed \$100~~, in accordance with A.R.S. § 16-945. No contributions may be accepted from political action committees, political parties or corporations. ~~The total contributions for a candidate for governor shall not exceed \$40,000. For all other candidates, the total early contributions shall not exceed 10 percent of the sum of the original primary and general election spending limits;~~
 2. Not accept any private contributions, other than early contributions and a limited number of \$5 qualifying contributions;
 3. Make expenditures of personal monies of no more than the amounts prescribed in A.R.S. § 16-941(A)(2) ~~\$500~~ for legislative candidates and ~~no more than \$1000~~ for statewide office candidates;
 4. Conduct all activity through a single campaign account. A participating candidate shall only deposit early contributions, qualifying contributions and Clean Elections funds into the candidate's current campaign account. The campaign account shall not be used for any non-direct campaign purpose as provided in Article 7 of these rules;
1. Attend at least one candidate training class sponsored by the Commission, and cause the candidate's campaign treasurer to attend at least one candidate training class, during the election cycle. If the candidate or the treasurer is unable to attend a training class, the candidate or treasurer shall:
 - a. Notify the Commission that the candidate or treasurer is unable to attend a training class. The Commission then will send that person the Commission training materials; and

- b. The candidate or treasurer shall sign and send to the Commission a statement certifying that he or she has received and reviewed the Commission training materials;
 2. Limit campaign expenditures. Prior to qualifying for clean elections funding, a candidate shall not incur debt, or make an expenditure in excess of the amount of cash on hand. Upon approval for funding by the Secretary of State's office, a candidate may incur debt, or make an expenditure, not to exceed the sum of the cash on hand and the applicable spending limit.
- E. Personal loans. A participating candidate may loan his or her campaign committee personal monies during the exploratory and qualifying periods only. The total sum of the loans shall not exceed the personal monies expenditure limits set forth in A.R.S. § 16-941(A)(2). If the loan is to be repaid, ~~These~~ the loans shall ~~promptly~~ be repaid promptly with upon receipt of Clean Elections funds if the participating candidate qualifies for Clean Elections funding. Loans from a bank, or other institution listed in A.R.S. § 16-901(5)(b)(vii) to a candidate shall be considered personal monies and shall not exceed the personal monies expenditure limits set forth in A.R.S. § 16-941(A)(2).
- F. Officeholder Expenses. Prior to April 30 of an election year, an elected official may raise or spend money to defray the expense of performing officeholder duties, and the event or item purchased shall be completed or otherwise used and depleted prior to April 30 of an election year, as follows:
 1. The candidate may first exhaust all surplus monies from prior campaign accounts pursuant to subsection (B) of this rule or may use personal monies for officeholder expenses;
 2. Money raised shall be only from individuals and the maximum raised from an individual during the election cycle shall not exceed one-half the early contribution limit;
 3. The sum of the money raised or spent shall not exceed two times the early contribution limit applicable to the officeholder's current office;
 4. For an officeholder's future campaign as a:
 - a. Participating Candidate-
 - i. Money raised pursuant to this subsection will not be deemed early contributions, and
 - ii. Personal money spent pursuant to this subsection shall not apply to personal money expenditure limits provided in A.R.S. § 16-941(A)(2).
 - b. Nonparticipating Candidate-

- i. Money raised or spent pursuant to this subsection will not be calculated in matching funds to opponents as provided in A.R.S. § 16-952, and
 - ii Money raised or spent pursuant to this subsection will not trigger the reporting requirements provided in A.R.S. §§ 16-941(D) and 16-958.
- 5. Any money raised or spent in excess of the limits established in this Section, however, shall be calculated as early contributions or personal monies for participating candidates, or for matching funds and reporting requirements for nonparticipating candidates;
- 6. Money raised or spent for officeholder expenses shall be reported under campaign finance reporting requirements pursuant to A.R.S. Title 16, Chapter 6, Article 1 as follows:
 - a. The officeholder shall establish an account for officeholder expenses, which shall be separate from any candidate campaign account;
 - b. The account shall be designated on the statement of organization as "Officeholder Expense Account;" and
 - c. Any money remaining in the officeholder expense account after April 30 of an election year shall either not be spent for the remainder of the calendar year, or shall be remitted to the Clean Elections Fund;
- 7. Money in the officeholder expense account shall not be used for direct campaign purposes or in connection with the officeholder's future campaign for elective office; and
- 8. Permissible uses of the money in the officeholder expense account include:
 - a. Expenditures for office equipment and supplies;
 - b. Expenditures for work-related travel;
 - c. Donations to tax-exempt charitable organizations; or
 - d. Expenditures to meet or communicate with constituents.
- G. A participating candidate may raise early contributions for election to one office and choose to run for election to another office.
- H. If the Commission has reason to believe by a preponderance of the evidence that a participating candidate is not in compliance with the ~~act~~ Act or Commission rules, the Commission may decertify a

candidate, deny or suspend funding, order repayment of funds, or impose any other penalty the Commission deems appropriate.

I. Contributions to officeholder expense accounts are subject to the restrictions of A.R.S. § 41-1234.01, contributions prohibited during session; exceptions.

R2-20-107. ~~Repealed~~ Candidate Debates

A. The Commission shall sponsor debates among statewide and legislative office candidates prior to the primary and general elections unless there is no participating candidate in the election for a particular office.

B. In the primary election, the Commission shall sponsor primary election debates as follows:

1. According to political party affiliation of candidates, recognized on the official ballot, where at least one of the candidates is a participating candidate, and
2. Party primary candidates are opposed in the election for the political party's nomination.

C. The following candidates will not be invited to participate in debates as follows:

1. In the primary election, write-in candidates for the primary election, independent candidates, no party affiliation or unrecognized party candidates.
2. In the general election, write-in candidates.

D. Pursuant to A.R.S. § 16-956(A)(2), all participating candidates certified pursuant to A.R.S. § 16-947 shall attend and participate in the debates sponsored by the Commission.

E. Unless exempted, if a participating candidate fails to participate in any Commission-sponsored debate, the participating candidate shall be ineligible to receive any further equalizing funds for that election. For purposes of this section, each primary or general election shall be considered a separate election.

F. A participating candidate may request to be exempt from participating in a required debate by doing the following:

1. Submit a written request to the Commission at least one week prior to the scheduled debate; and
2. State the reasons and circumstances justifying the request for exemption.

G. After examining the request to be exempt, the Commission will exempt a candidate from participating in a debate if at least 3 Commissioners determine that the circumstances are:

1. Beyond the control of the candidate;
2. Of such nature that a reasonable person would find the failure to attend justifiable or excusable; or
3. Good cause, as defined in A.R.S. § 16-918(E).

H. A participating candidate who fails to participate in a required debate may submit a request for reconsideration to the Commission.

1. The candidate's request for reconsideration shall:
 - a. State the reason the candidate failed to participate in the debate; and
 - b. Be submitted to the Commission no later than five business days after the date of the debate the candidate failed to attend.
2. After examining the request for reconsideration, the Commission will excuse a candidate from the penalties imposed if at least three Commissioners determine that the circumstances were:
 - a. Beyond the control of the candidate;
 - b. Of such nature that a reasonable person would find the failure to attend justifiable or excusable; or
 - c. Good cause, as defined in A.R.S. § 16-918(E).

I. When a participating candidate is unopposed in the candidate's party primary election, the candidate shall be exempt from participating in a Commission-sponsored debate for the primary election. When a participating candidate is unopposed in the general election, the candidate shall be exempt from participating in a Commission-sponsored debate for the general election.

ARTICLE 2. COMPLIANCE AND ENFORCEMENT PROCEDURES

R2-20-206. ~~Administrative Counsel's~~ Executive Director's Recommendation on Complaint-generated Matters

- A. Following either the expiration of the five day period specified by R2-20-205 or the receipt of a response as specified by R2-20-205(A), whichever occurs first:
1. The Executive Director may recommend to the Commission whether it should find reason to believe that a respondent has committed or is about to commit a violation of a statute or rule over which the Commission has jurisdiction; or
 2. The ~~Administrative Counsel~~ Executive Director may recommend that the Commission find that there is no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has been committed or is about to be committed, or that the Commission otherwise dismiss a complaint without regard to the provisions of R2-20-205(A).
- B. Neither the complainant nor the respondent has the right to appeal the ~~Administrative Counsel's~~ Executive Director's recommendation made pursuant to subsection (A) because the recommendation is not a final administrative action.

R2-20-208. Complaint Processing; Notification

- A. If the Commission, either after reviewing a complaint-generated recommendation as described in R2-20-206 and any response of a respondent submitted pursuant to R2-20-205, or after reviewing an internally-generated recommendation as described in R2-20-207, determines by an affirmative vote of at least three of its members that it has reason to believe that a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall notify such respondent of the Commission's finding setting forth the sections of the statute or rule alleged to have been violated and the alleged factual basis supporting the finding. In accordance with A.R.S. § 16-957(A), the Commission shall serve on the respondent an order requiring compliance within 14 days. During that period, the respondent may provide any explanation to the Commission, comply with the order, or enter into a public administrative settlement with the Commission.
- B. If the Commission finds no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred, or otherwise terminates its proceedings, the ~~Administrative Counsel~~ Executive Director shall so notify both the complainant and respondent.

- C. The complainant may bring an action in Superior Court in accordance with A.R.S. § 16-957 (C) if the Commission finds there is no reason to believe a violation of a statute or rule over which the Commission has jurisdiction has occurred, or otherwise terminates its proceedings.

R2-20-214. The Probable Cause to Believe Recommendation; Briefing Procedures

- A. Upon completion of the investigation conducted pursuant to R2-20-209, the ~~Administrative Counsel~~ Executive Director shall prepare a brief setting forth his or her position on the factual and legal issues of the case and containing a recommendation on whether the Commission should find probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur.
- B. The ~~Administrative Counsel~~ Executive Director shall notify each respondent of the recommendation and enclose a copy of his or her brief.
- C. Within five days from receipt of the ~~Administrative Counsel's~~ Executive Director's brief, the respondent may file a brief with the Commission setting forth the respondent's position on the factual and legal issues of the case.
- D. After reviewing the respondent's brief, the ~~Administrative Counsel~~ Executive Director shall promptly advise the Commission in writing whether he or she intends to proceed with the recommendation or to withdraw the recommendation from Commission consideration.

R2-20-217. Enforcement Proceedings

- A. Upon a finding of ~~probably~~ probable cause that the alleged violator remains out of compliance, the Executive Director may recommend to the Commission that the Commission authorize the issuance of an order and assessment of civil penalties pursuant to A.R.S. § 16-957(B).
- B. The Commission may, by an affirmative vote of at least three of its members, authorize the Executive Director to issue an order and assess civil penalties pursuant to A.R.S. § 16-957(B).
- C. Subsections A and B of this rule shall not preclude the Commission, upon request of a respondent, from entering into a conciliation agreement pursuant to R2-20-216 even after the Commission authorizes the Executive Director to issue an order and assess civil penalties pursuant to subsection B.

Any conciliation agreement reached under this subsection is subject to the provisions of R2-20-216(B) and shall have the same force and effect as a conciliation agreement reached under R2-20-216(D).

R2-20-231. ~~Request for Reconsideration~~ Repealed

- A. ~~A participating candidate who fails to participate in a required debate, without exemption pursuant to A.A.C. R2-20-230, may submit a request for reconsideration to the Commission. The candidate's request for reconsideration shall:~~
- ~~1. State the reason the candidate failed to participate in the debate; and~~
 - ~~2. Be submitted to the Commission no later than 5 business days after the date of the debate the candidate failed to attend.~~
- B. ~~After examining the request for reconsideration, the Commission will excuse a candidate from the penalties imposed pursuant to A.A.C. R2-20-229 if at least 3 Commissioners determine that the circumstances were:~~
- ~~1. Beyond the control of the candidate;~~
 - ~~2. Of such nature that a reasonable person would find the failure to attend justifiable or excusable; or~~
 - ~~3. Good cause, as defined in A.R.S. § 16-918(E).~~

ARTICLE 7. USE OF FUNDS AND REPAYMENT

R2-20-702.01 Use of Assets

A participating candidate may use assets such as signs, pamphlets, and office equipment from a prior election cycle only after the candidate's current campaign acquires the assets for an amount equal to the fair market value of the assets. If the candidate was a participating candidate during the prior election cycle, the cash payment shall be made to the Fund. If the candidate was not a participating candidate during the prior election cycle, the cash payment shall be made to the prior campaign. If the prior campaign account of a nonparticipating candidate is closed, the payment shall be made to the candidate.

R2-20-703. Documentation for Direct Campaign Expenditures

- A. In addition to the general books and records requirements prescribed in R2-20-111, participating candidates shall comply with the following requirements:
1. All participating candidates shall have the burden of proving that expenditures made by the candidate were for direct campaign purposes. The candidate shall obtain and furnish to the Commission on request any evidence regarding direct campaign expenses made by the candidate as provided in subsection (A)(2).
 2. All participating candidates shall retain records with respect to each expenditure and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years, and shall present these records to the Commission on request.
 3. All participating candidates shall maintain a list of all fixed assets whose purchase price exceeded \$300 when acquired by the campaign. The list shall include a brief description of each fixed asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition.
- B. Upon written request from a candidate, the Commission shall determine whether a planned campaign expenditure or fund-raising activity is permissible under the Act. To make a request, a

candidate shall submit a written description of the planned expenditure or activity to the Commission. The Commission shall inform the candidate whether an enforcement action will be necessary if the candidate carries out the planned expenditure or activity. The Commission shall ensure that the candidate can rely on a “no action” letter. A “no action” letter applies only to the candidate who requested it.

C. Joint expenditures. Expenditures may be made in conjunction with other candidates, but each candidate shall pay his or her proportionate share of the cost. A candidate’s payment for an advertisement, literature, material, campaign event or other activity shall be considered a joint expenditure including, but not limited to, the following criteria:

1. The activity includes express advocacy of the election or defeat of more than two candidates;
2. The purpose of the material or activity is to promote or facilitate the election of a second candidate;
3. The use and prominence of a second candidate or his or her name or likeness in the material or activity;
4. The material or activity includes an expression by a second candidate of his or her view on issues brought up during the election campaign;
5. The timing of the material or activity in relation to the election of a second candidate;
6. The distribution of the material or the activity is targeted to a second candidate’s electorate; or
7. The amount of control a second candidate has over the material or activity.

D. Any expenditure made by the candidate or the candidate’s committee that cannot be documented as a direct expenditure shall promptly be repaid to the Fund with the candidate’s personal monies.